IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO 6 of 1984
with
CRIMINAL APPEAL NO 20 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

ISMAIL B VORA

Appearance:

1. Criminal Appeal No. 6 of 1984
   MR KT DAVE, A.P.P. for Petitioner No. 1
   ..... for Respondent No. 1
2. Criminal Appeal No. 20 of 1984
   MR KT DAVE, A.P.P. for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 21/01/2003

ORAL COMMON JUDGEMENT

1. Both these Appeals are disposed of by this common Judgment as they are arising out of cross cases filed against the respondents accused in both the Criminal Case

Nos.1264/81 and 1268/81.

2. Criminal Case No.1264/81 was filed against 4 accused, namely, (i) Sarfuddin Sidarbhai Malek, (ii) Nasiruddin Sidarbhai Malek, (iii) Mohmadbhai Sidarbhai Malek (deceased) and (iv) Ilmuddin Sidarbhai Malek for the offences u/ss. 324, 323, 504 and 114 I.P.Code. Criminal Appeal No.20 of 1984 is arising out of the judgment and order of acquittal dated 27.9.1983 passed by the learned J.M.F.C., Khambhat, whereby the learned Magistrate ordered to acquit all the accused. Since accused No.3 Mohmedbhai Sidarbhai Malek died during the pendency of Criminal Case No.1264 of 1981 the State has filed this Appeal against remaining 3 accused respondents.

3. Criminal Case No.1268 of 1981 was filed against 3 accused - respondents, namely, (i) Ismailbhai Ravjibhai Vora, (ii) Allarakha Bavujibhai Vora, and (iii) Nurabhai Bavjibhai Vora for the offences u/ss. 324, 323, 504, 114 I.P.Code. The learned J.M.F.C., Khambhat by his separate Judgment and order dated 27.9.1983 acquitted all the accused. Criminal Appeal No.6 of 1984 is arising out of the impugned judgment and order of acquittal passed by the learned J.M.F.C., Khambhatt in Criminal Case No.1268/81.

4. The incident in question took place way back on 26.5.1981. The accused of both the sides belong to Muslim community. The quarrel between them took place at about 12.00 noon on 26.5.1981. They all were residing in the same village. Considering the oral as well as documentary evidence led by the prosecution the learned Magistrate was of the opinion that in both the cases the prosecution has failed to prove the case against the respondents - accused beyond reasonable doubt. Therefore, he acquitted all the respondents - accused by 2 separate Judgments delivered on the same day i.e. 27.9.1983.

5. Having carefully gone through the impugned Judgment and order of acquittal passed by the learned Magistrate in both the cases I am of the considered opinion that no interference is called for by this Court in these acquittal Appeals filed by the State. For acquitting the respondents - accused in both the cases the learned Magistrate has given cogent reasons. The learned Magistrate was of the opinion that the oral evidence of the prosecution witnesses in both these cases does not inspire confidence. Therefore, he gave benefit of doubt to the accused of both the cases.

6. In view of the above, learned A.P.P.Shri Dave, appearing for the State of Gujarat in both these Appeals, was not in a position to seriously challenge the impugned order of acquittal. When two views are possible and one taken by the learned Magistrate in favour of the accused then this Court would be slow in interfering with such an order of acquittal and that too after almost 22 years of the incident.

7. Before parting, I must state that in both these cases the respondents - accused were duly served, but they have not preferred to appear through their Counsel. Be that as it may.

8. In view of the above discussion both these Appeals fail and are hereby dismissed.

Date : January 21, 2003 (B.J.Shethna, J.)

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